

Supplemental Commission Decision  
21 RR 885, 891 (1961)



FCC 61-933  
4073  
31 FCC \_\_\_\_\_

In re Applications of )

Earl S. Walden, Homer T. Goodwin, and )  
Leroy Durham, dba )  
PLAINVIEW RADIO )  
Plainview, Texas )

Docket No. 11836  
File No. BP-10200

Troyce H. Harrell and Kermit S. Ashby, dba )  
STAR OF THE PLAINS B/CASTING CO. )  
Slaton, Texas )

Docket No. 11837  
File No. BP-10499

For Construction Permits )

[§53:24] Fair, efficient and equitable distribution  
of facilities.

An application to provide a first local transmission  
facility to Slaton, Texas will be granted in preference  
to an application to provide a second service to  
Plainview, Texas.

#### Appearances

Andrew G. Haley, Michael H. Bader, Donald L. Rushford and John E. Seth for  
Plainview Radio; Norman E. Jorgensen for Star of the Plains Broadcasting  
Co.; and Richard E. Ely for Chief, Broadcast Bureau, Federal Communications  
Commission.

#### SUPPLEMENTAL DECISION

By the Commission: (Commissioners Minow, Chairman; Craven and Cross  
not participating; Commissioner Bartley dissenting).

1. Each of the subject applicants seeks a construction permit for a new  
standard broadcast station to operate daytime only on the frequency 1050  
kilocycles. Plainview Radio would locate at Plainview, Texas, utilizing a  
directional antenna and one kilowatt of power. Star of the Plains Broadcasting  
Company would operate 55 miles away in Slaton, Texas with 250 watts of  
power. Because of mutual exclusivity, only one of the applications can be  
granted.

2. Plainview has a population of 14,044 persons. There is located there one  
standard broadcast station, KVOP, an unlimited time station operating with  
250 watts of power on the frequency 1400 kilocycles. Primary service is  
provided to Plainview by five other stations, none closer to Plainview than  
22.5 miles. Within the remainder of Plainview Radio's proposed primary  
service area no point presently receives less than five other services.

3. Slaton's population is 5,036. It lies 7.8 miles from Lubbock and it is within that city's standard metropolitan area. There is no standard broadcast station located in Slaton, but primary service is provided to the city by six stations, five in Lubbock and one 100 miles away in Midland, Texas. Within the balance of Star's proposed primary service area no point presently receives less than ten other primary services.

4. A Supplemental Initial Decision was released by Hearing Examiner Forest L. McClenning on April 20, 1960 [15 RR 382c] (FCC 60D-47). 1/ The Examiner ultimately concludes that the presumption of need for a first local transmission service in Slaton as a separate community of substantial size has not been overcome by a showing of greater comparative need in Plainview. Accordingly, he recommends a grant of the Slaton application and a consequent denial of the Plainview application. Each of the appearing parties has filed exceptions, only Plainview Radio challenging the Examiner's final result. Oral argument before the Commission en banc was held on February 3, 1961. The Commission's rulings on the parties' exceptions are set forth in the Appendix attached hereto. Subject to the modifications and comments contained herein and in the appendix, the Supplemental Initial Decision is adopted in its entirety.

5. In so far as service to Slaton is concerned, there has been no appreciable detractor from the 307(b) presumption favoring a first-local transmission facility. Whatever the reason, it is abundantly clear that the Lubbock stations have not functioned, in any perceptible degree, as transmission outlets for the Slaton community; and this is true even though five of the six stations there are licensed for regional facilities, which are expected to serve outlying areas as well as the city with which they are identified. That affirmative efforts by Lubbock stations to serve Slaton's needs would likely be met with success is illustrated by Slaton's use of the facilities of standard broadcast station KUKO, 23 miles away in Post, Texas. On the subject of KUKO, in no sense can that station be regarded as an outlet for Slaton since the intensity of its signal there is not such as to constitute primary service within the meaning of applicable Commission rules and standards. In any event, the limited broadcast segments allocated by KUKO for the distant community of Slaton can hardly be regarded as satisfying in any significant manner the obvious broadcast needs of such community. 2/

6. Plainview Radio fares no better when the past broadcast record of KVOP is considered. Although the Commission cannot endorse the station's policy with respect to commercial spot announcements, neither can it say that the station's attentions to community needs have been seriously deficient in any major respect. On the contrary, the record firmly supports the Examiner's conclusion that, with respect to a monitored week in December of 1959, KVOP presented "a reasonably well-balanced program service which included locally

---

1/ The Supplemental Initial Decision sets forth the background and history of the proceeding, and this information need not be repeated here.

2/ We do not here speak critically of KUKO since the Commission has no requirement that a station cater to communities beyond its primary service contours.

## PLAINVIEW RADIO



originated programs designed to serve the city of Plainview and its immediate surrounding agricultural area." Plainview Radio not having shown otherwise, it must be assumed that the station's programming throughout the year is also "reasonably well-balanced."

7. As fully demonstrated by the Examiner, the record in this proceeding tends to support rather than to overcome the Section 307(b) presumption existing with respect to Slaton. This being so, his preference for the Slaton applicant was clearly warranted.

Accordingly, it is ordered, this 26th day of July, 1961, that the application of Troyce H. Harrell and Kermit S. Ashby, dba Star of the Plains Broadcasting Company, for a construction permit for a new standard broadcast station to operate on the frequency of 1050 kilocycles with a power of 250 watts, daytime only, at Slaton, Texas, is granted; and that the application of Earl S. Walden, Homer T. Goodwin, and Leroy Durham, dba Plainview Radio, for use of the same frequency at Plainview, Texas, is denied.

Released: August 3, 1961

### APPENDIX

#### Rulings on Exceptions

#### Exceptions of Plainview Radio

Exception No. *	Ruling
1f, 1c	Denied. Star of the Plains had no burden of proof with respect to the KCCO program service. Cf. Wayne M. Nelson, FCC 60-438, 17 RR 371 (1960). Moreover, in light of KCCO's decision not to appear at the further hearing, the location of the interference area with respect to Lawton, and the multiplicity of services available to the interference area, the validation herein of Slaton's first-local presumption is determinative of the §3.24(b) question presented.
2f	Denied. Paragraph 6 of the Supplemental Initial Decision makes clear that there is no evidence that stations other than KVOP program for Plainview.
3f	Denied. Paragraph 6 of the Supplemental Initial Decision recites that KVOP serves 27.6% of the South Plains irrigated farm region.

---

\* An "f" indicates that the exception is directed to the Examiner's findings of fact. A "c" indicates that the exception is directed to the Examiner's conclusions.



## Exception No.

## Ruling

- 4f Denied. Although it is undoubtedly not wholly accurate to say that the monitor had no familiarity with the Commission's program definitions, her failure to recognize the program on consumer credit and interest rates as an educational program precludes any great reliance on her opinion evidence contained in Plainview Exhibit C.
- 5f Granted in part, and there is added to paragraph 7 of the Supplemental Initial Decision the finding that KVOP presented 1822 commercial spot announcements during the monitored week.
- Denied as to the balance, since the Commission detects no implication in the paragraph that the 1822 announcements were an extraordinary number attributable to the Christmas season.
- 6f Denied in substance. In light of the failure referred to in the Commission's ruling on Plainview Radio's Exception 4f, the qualifications of the monitor to differentiate among the various types of programs cannot be conceded. A failure by the station to mention the Red Cross, and the Salvation Army does not preclude a conclusion that the programming in a particular week was "reasonably well-balanced." And see ruling on Plainview Radio Exception 8f, *infra*.
- 7f Denied. KVOP employs an agriculture graduate as its farm director, and this farm director has no other duties at the station. He presents two agricultural programs daily (except Sunday). Additionally, the station has approximately 30 newscasts per day, and "a good third" of the news programming pertains to "farm matters." Under these circumstances, it cannot be concluded that the station's agricultural programming is inadequate.
- 8f Denied. KVOP broadcast 200 noncommercial spot announcements on behalf of the 1959 United Fund drive. This bespeaks a generous attitude on the part of the station, and its coverage of the activities of Plainview's civic groups cannot be described as "totally inadequate" even though a number of civic groups may have been overlooked.
- 9f Denied. The finding is free of the implication complained of, and the Commission does not regard the program as other than entertainment. That the program has other merit, however is illustrated by the cooperation extended by the station to the school and students involved.

## PLAINVIEW RADIO



### Exception No.

### Ruling

- 10f Denied. The policy of the station with respect to religious programming cannot be said to be unreasonable. By no standard can it be termed "grossly inadequate."
- 11f Denied. Section 307(b) contemplates an equitable distribution of broadcast facilities in each class of service. Tupelo Broadcasting Co., 12 RR 1233 (1956); The Monocacy Broadcasting Co., 29 FCC 717, 19 RR 165 (1960). Accordingly, the presence of FM and TV signals is not a determinative factor. The "noise free" nature of KUKO's signal is not material, since the fact of primary service is determined by the intensity of the station's signal. (See Supplemental Decision, paragraph 5.)
- 12f, 2c Denied. The additional findings and modifications contended for would not alter the conclusions that Slaton is a community separate from Lubbock, and that the Lubbock stations have not functioned as transmission outlets for Slaton.
- 13f Granted in part, and the findings in paragraph 13 of the Supplemental Initial Decision are corrected to show that the Chief of Police never made a formal request for time on a Lubbock station.
- Denied as to the balance. As to the significance of the KUKO programming, see Supplemental Decision, paragraph 5.
- 14f, 7c, 9c Denied. As to the significance of the KUKO programming, see Supplemental Decision, paragraph 5.
- 15f, 15c Denied. As to Exhibit G, the Examiner properly excluded evidence of programming; it can be assumed that to the extent that needs exist in Plainview, Plainview Radio would tend to meet them. As to Exhibits E and F, the bulk of the evidence excluded is merely cumulative in that the greater size of Plainview has already been established. In any event, in light of Slaton's unfulfilled transmission needs, the additional data requested is without decisional significance.
- 16f, 6c,  
10c, 11c Denied. The Examiner has found that Slaton organizations have made no substantial efforts to utilize the Lubbock stations. Slaton's use of the KUKO facilities, however, suggests that it would be receptive to programming advances tendered by the Lubbock stations. (See Supplemental Decision, paragraph 5.)
- 17f Denied. The Hearing Examiner's Memorandum Opinion and Order of January 14, 1960 (FCC 60M-113 - released January 18, 1960) is affirmed.

Exception No.	Ruling
3c, 4c, 5c	Denied. See Supplemental Decision, paragraph 6. And see rulings on Plainview Radio Exceptions 6f, 7f, 8f, 9f and 10f.
8c	Denied. The Examiner has correctly applied Commission policy with respect to auxiliary studios. Moreover, because it does not place in Slaton a signal of at least 2 mv/m, KUKO cannot be regarded as meeting that city's needs. (See Supplemental Decision, paragraph 5.)
12c	Denied in substance. Although Plainview has a definite need for a second local station, such need is clearly outweighed by Slaton's need for a first local service.
13c	Denied. See rulings on Plainview Radio Exceptions 14f and 16f.
14c, 16c	Denied. As to Plainview Radio's success in overcoming the 307(b) presumption, see Supplemental Decision, paragraphs 5-7.

Exceptions of Star of the Plains Broadcasting Co.

Exception No.	Ruling
1	Granted. Paragraph 7 of the Supplemental Initial Decision is corrected to show that the program on consumer credit and interest rates was an educational program.
2, 3, 16	Denied. Plainview's need for a second local station is apparent. (But see ruling on Plainview Radio Exception 12c.)
4	Granted in substance. Paragraph 8 of the Supplemental Initial Decision is modified to show that KVOP's farm director is an agriculture graduate.
5, 7, 9, 12	Denied. The additional findings requested would add nothing of decisional importance to the proceeding.
6	Denied. The substance of the requested finding appears in paragraph 12 of the Supplemental Initial Decision.
8, 13, 15	Denied. Although one or more Slaton organizations may have made efforts to utilize the Lubbock stations from time to time, the generalizations complained of are essentially accurate. (But see Supplemental Decision, paragraph 5.)
10, 11, 14	Granted in substance. As to the significance of KUKO programming, see Supplemental Decision, paragraph 5.



## Exceptions of the Broadcast Bureau

Exception No.Ruling

- 1 Denied. The Examiner has denied that KUKO can be regarded as a local outlet for Slaton; otherwise, the exception would be well taken.
- 2, 4 Denied. The Examiner has not attributed decisional significance to KUKO's plans for an auxiliary studio in Slaton.
- 3 Granted. The fourth sentence of paragraph 2 of the Conclusions of the Supplemental Initial Decision is deleted.
- 5 Denied. In stating that there would be a "more effective utilization of the frequency at Plainview than at Slaton," the Examiner obviously has reference to the fact that Plainview has a greater population than has Slaton. In the earlier hearing on these applications, it was established that each applicant would serve approximately 145,000 persons. See Plainview Radio, 24 FCC 405, 422; 15 RR 364, 382 (1958).
- 6 Denied in substance. With respect to that part of the South Plains region which Plainview Radio would serve and KVOP does not serve, the Examiner concluded: "No showing was made of need in this area not presently met by [other] services." Accordingly, the errors (if any) of the Examiner are harmless.

FCC 61-1495  
12090  
31 FCC \_\_\_\_\_

In re Applications of	)	
Earl S. Walden, Homer T. Goodwin	)	
and Leroy Durham, dba	)	
PLAINVIEW RADIO	)	Docket No. 11836
Plainview, Texas	)	File No. BP-10200
Troyce H. Harrell and Kermit S.	)	
Ashby, dba	)	
STAR OF THE PLAINS	)	Docket No. 11837
B/CASTING CO.	)	File No. BP-10499
Slaton, Texas	)	
For Construction Permits	)	

[§53:24] Auxiliary studios.

An auxiliary studio is no substitute for a transmission facility, and the existence of such a studio is of little significance in determining the availability of local broadcast service.





[153:182] Service to community.

The Commission's rules require a 2 mv/m signal for a primary service to a community of a given size, and where service of this grade is not provided, the Commission will not consider evidence that residents of the community listen to the station or that a noise-free signal is provided.

MEMORANDUM OPINION AND ORDER

By the Commission: (Commissioners Minow, Chairman; Craven and Cross not participating; Commissioner Bartley dissenting.)

1. The Commission has before it a "Petition for Reconsideration and for Reopening of Proceeding" filed September 5, 1961, by Plainview Radio. The petition requests reconsideration of the Commission's Decision (31 FCC 259, 21 RR 885) denying Plainview Radio's application and granting that of Star of the Plains Broadcasting Co. (Star), the two applicants having sought new standard broadcast stations in Plainview and Slaton, Texas, respectively. An opposition to the petition was filed September 12, 1961 by Star.

2. Plainview Radio objects to those portions of our Supplemental Decision which held that (1) Station KUKO, Post, Texas, cannot be regarded as an outlet for Slaton since it does not furnish primary service thereto; (2) the limited broadcast segments devoted by Kuko to Slaton do not satisfy the needs of Slaton; and (3) Slaton's need for a first station is greater than Plainview's need for a second station. Plainview Radio contends that it is unrealistic to conclude that because KUKO does not furnish a signal of at least 2 mv/m to Slaton, <sup>1/</sup> it cannot be regarded as meeting that city's needs. In support, Plainview Radio States that (1) an engineering consultant testified that the KUKO signal in Slaton is noise-free; (2) a number of Slaton residents testified that they regularly listen to KUKO; (3) the record contains an extensive showing as to the programming originated for Slaton and, in many cases, in Slaton by KUKO, and (4) KUKO maintains permanent studios in Slaton. Plainview Radio submits that KUKO does provide service to Slaton and it would be contrary to the public interest for the Commission to base its decision on a "purely engineering fiat which has been shown to be meaningless." Plainview Radio further contends that the KUKO service to Slaton is not limited, as found by the Commission, inasmuch as the record "contains page after page of the most detailed kinds of day to day services provided by KUKO to Slaton;" that the present service of KUKO offers extensive programming and other services to Slaton from the permanent studios established there by KUKO; that approximately 46% of KUKO's broadcast schedule, Monday through Friday, is devoted to programming from the Slaton studios, and that the record should be reopened to show the nature of KUKO's service to Slaton. Plainview Radio also resurrects its contention concerning the quality of KVOP's service to Plainview.

---

<sup>1/</sup> KUKO provides a signal intensity between 2 mv/m and 1.6 mv/m over the city of Slaton.

## PLAINVIEW RADIO



3. It is well established Commission policy that an auxiliary studio is no substitute for a transmission facility, and the existence of such studio, however commendable, is of little significance in determining the availability of local broadcast service. See Sanford A. Schafitz, 24 FCC 363, 379, 14 RR 852, 864e (1958), and Miners Broadcasting Service, Inc., 23 FCC 408, 442; 13 RR 1163, 1196b (1957) [quoted in Valley Broadcasting Co., et al., 29 FCC 463, 466 (1960)]. Plainview Radio fails to set forth any compelling reasons as to why this policy should be changed. Similarly, Plainview Radio's contention with respect to the signal which KUKO furnishes Slaton is without merit. KUKO fails to provide a signal of 2 mv/m to Slaton. Statements of a number of residents of Slaton that they listen to KUKO are not sufficient to warrant disregarding the Commission's long established engineering standards. These standards (47 C. F. R. §3.182) are specific and make it clear that a 2 mv/m signal is required for primary service to Slaton. Plainview Radio's comment with respect to the quality of service which KVOP furnishes to Plainview presents no new arguments and the matter is adequately considered in our Decision and the Initial Decision herein.

Accordingly, it is ordered, this 20th day of December, 1961, that the Petition for Reconsideration and for Reopening of Proceeding, filed by Plainview Radio is denied in all respects.

Released: December 27, 1961

---